

RUNNING HEAD: **Documenting Hate Crimes**

Documenting Hate Crimes in the United States: Some Considerations on Data Sources

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Abstract

Hate crimes based on the victim's perceived sexual orientation or gender identity first came to be identified in the United States as a social problem requiring national attention in the 1980s. Since then, the need for accurate documentation of the incidence and prevalence of such crimes has been an ongoing concern for policy makers, advocates, and law enforcement personnel seeking to understand their extent and track annual trends. This article describes and provides some historical context for four general documentation sources: victim reports to community anti-violence organizations, community surveys conducted with nonprobability samples of sexual and gender minority respondents, data from local law enforcement agencies compiled annually by the Federal Bureau of Investigation, and surveys conducted with national probability samples. Each source type's strengths, limitations, and appropriate uses should be considered when citing hate crimes data.

In the wake of a widely publicized hate crime against sexual and gender minorities, such as the 2016 mass shooting at the Pulse nightclub in Orlando (Alvarez & Pérez-Peña, 2016), public reactions and media coverage usually include discussion of how prevalent such crimes are, whether they are increasing in frequency, and how they compare with hate crimes targeting other groups (e.g., Koeze, 2016; Park & Mykhyalyshyn, 2016; Stolberg, 2016).

The need for accurate documentation to address these and other questions has been an ongoing concern since at least the 1980s, when hate crimes based on sexual orientation first came to be identified in the United States as a social problem requiring national attention. Empirical data were needed to show legislators and the public that hate crimes constituted a widespread problem rather than rare – albeit disturbing – occurrences not warranting a governmental response. Documentation also was understood to be necessary for developing effective policy and laws, monitoring trends, designing targeted interventions and prevention strategies, and identifying and evaluating appropriate responses to hate crimes (e.g., (Herek & Berrill, 1990); Jenness & Broad, 1997).

This article presents an overview of the main sources and methods that have been used for documenting hate crimes against sexual and gender minorities. An understanding of the strengths and limitations of each approach, as well as the historical context in which each has developed, is necessary for anyone striving to be a critical consumer of hate crimes data.

Some Historical Background

In the United States and elsewhere throughout most of the 20th century, individual acts of violence were widely considered “natural” reactions to people who were perceived to be homosexual or transgressing traditional gender norms. Victims were routinely regarded as

deserving whatever harassment or violence they experienced – “asking for it” – because of their visibility or even their very existence (e.g., Berrill & Herek, 1992).

Beginning in the 1970s, however, as the modern movement for sexual minority rights developed and gay and lesbian communities organized and attained greater visibility throughout the United States, sexual minority advocates were increasingly successful in challenging this worldview, calling upon the criminal justice system and society in general to redefine violence not as a normal consequence of being gay but instead as a serious problem warranting response. Community advocates had considerable success arguing that antigay¹ attacks – like other instances of murder, assault, robbery, and vandalism – should be regarded as crimes and that blame and punishment should be directed at the perpetrators, not the victims (Herek & Sims, 2008). In response, elected officials, policymakers, and criminal justice professionals began to address sexual orientation-based violence as a social problem (Jenness & Grattet, 2001). This development in many ways built upon American society’s prior recognition that violent acts against racial, ethnic, and religious groups were repugnant in a modern democracy and warranted state intervention (Jenness & Grattet, 2001).

Such crimes came to be called *hate crimes* or, alternatively, bias crimes. The Federal Bureau of Investigation (2017) defines a hate crime as a “criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity” (“Defining A Hate Crime”). Similarly, the Anti-Defamation League of B’nai Brith (ADL), uses the term to refer to “a criminal act against a person or property in which the perpetrator chooses the victim because of the victim’s real or perceived race, religion, national origin, ethnicity, sexual orientation, disability or gender”

(Anti-Defamation League, 2017, “Definition of a Hate Crime”; see also Herek, 1989; Levin & McDevitt, 2002).

Hate crimes are different from other crimes in that they not only attack the victim physically, they also attack a core aspect of the victim’s personal identity and community membership, components of the self that are particularly important to many sexual and gender minority individuals because of the stress they experience as a consequence of societal stigma. Whereas being a victim of violent crime typically has negative psychological consequences, hate crimes appear to inflict greater psychological trauma than other kinds of violent crime (Herek, Gillis, & Cogan, 1999). In addition, hate crimes send a message of fear and intimidation to the larger sexual and gender minority community.

Although laws aimed at protecting minority groups from violence and crime have a long history in the United States, the modern hate crimes movement emerged relatively recently, led by the ADL and other organizations (Jenness & Grattet, 2001). Governmental responses to hate crimes came first at the state level, beginning with California in 1978. The earliest laws defined hate crimes as motivated by the victim’s race, national origin, or religion (Grattet, Jenness, & Curry, 1998). During the 1980s, however, hate crime laws in many states were written or revised to include sexual orientation as well (Jenness & Grattet, 2001). Most state laws work by enhancing penalties for hate crimes, that is, they increase the punishment for a criminal act if it is determined to be based on the victim’s sexual orientation, gender identity, or other group membership (Jenness & Grattet, 2001).

Today nearly all states have some form of hate crime law. At the time of this writing, statutes in 15 states and the District of Columbia directly address crimes based on the victim’s actual or perceived sexual orientation or gender identity. In another 15 states, laws include sexual

orientation but not gender identity. Of the remaining states, 15 have laws that do not list sexual orientation or gender identity as victim categories and 5 states have no hate crime law or have a law that addresses bias crimes but lists no categories and is considered too vague to enforce (e.g., National Gay and Lesbian Task Force, 2013).

At the federal level, the first major step toward recognition of antigay hate crimes came in the 1980s. On October 9, 1986, the first-ever Congressional hearing on antigay victimization was convened by Rep. John Conyers (D-MI), chairman of the House Judiciary Committee's Criminal Justice subcommittee (Subcommittee on Criminal Justice, 1987). The lead witness was Kevin Berrill, director of the Anti-Violence Project of the National Gay Task Force (later the National Gay and Lesbian Task Force, or NGLTF). Throughout the 1980s and early 1990s, Berrill played a central role in changing how American society viewed and responded to hate crimes against sexual and gender minorities. He worked to raise public awareness about such crimes, played a leading role in documenting their occurrence, and successfully advocated for local and national responses to them in law enforcement and the criminal justice system. Other subcommittee witnesses included the directors of anti-violence community groups in San Francisco and New York, representatives of criminal justice agencies, and several victims of antigay violence. I provided testimony on behalf of the American Psychological Association (APA).

The need for documentation of hate crimes based on sexual orientation was a recurring theme throughout the hearing. Afterward, therefore, it was a logical step for the participants and allied groups to direct their focus to a bill called the Hate Crimes Statistics Act (HCSA).

Supported by the Hate Crimes Coalition (a wide range of groups supporting racial, ethnic, and religious minority rights and civil liberties), it would mandate that the federal government collect

data on crimes based on the victim's race, ethnicity, or religion. Although congressional hearings had been held for the HCSA the previous year, it had not yet been passed. The NGLTF, APA, and other advocacy and professional groups began working to have sexual orientation included in the bill's language (Herek & Berrill, 1992b; (Jenness & Grattet, 2001). These efforts were ultimately successful.

With the addition of sexual orientation, however, the HCSA drew strong opposition from conservative members of congress, notably Senator Jesse Helms (R-NC). Nevertheless, the Hate Crimes Coalition remained committed to keeping sexual orientation in it. It ultimately was passed with strong bipartisan support and signed into law by President George H. Bush in 1990 (for discussions of the passage of the HCSA, see Harding, 1990; Herek & Berrill, 1992b; Vaid, 1995). It was the first federal law ever to explicitly recognize problems experienced by individuals because of their minority sexual orientation.²

Congress subsequently passed other legislation related to hate crimes. The statute most pertinent to the present discussion is the 2009 Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, or HCPA (PL No. 111-84). It expanded federal definitions and enforcement of hate crimes, bringing crimes based on sexual orientation and gender identity under the jurisdiction of the Department of Justice (DOJ) and authorized the DOJ to assist state and local jurisdictions with investigations and prosecutions of bias-motivated crimes of violence. It also expanded the FBI's mandate to include collection of statistics about crimes based on based on gender and gender identity.

Documenting Hate Crimes

Since the 1980s, documentation of the frequency, prevalence, and nature of violence against sexual minorities and, more recently, gender minorities has been based mainly on four

types of sources and methods: crime reports to community anti-violence organizations; community, state, and national surveys of sexual and gender minority respondents conducted with nonprobability samples; data reported by law enforcement agencies across the country to the Federal Bureau of Investigation; and surveys conducted with national probability samples.

Reports to Community Organizations and Anti-Violence Projects

The earliest documentation of sexual minority hate crime victimization came from the community itself. The proliferation of social and political activism in the nation's burgeoning sexual minority communities during the 1960s and 1970s – coupled with recognition that local police departments were often unable or unwilling to provide adequate protection from crimes based on sexual orientation – led to the organization of local groups and resources for dealing with violence. In many cities and towns, the process began with a telephone hot-line for reporting hate crimes (Vaid, 1995). It then often expanded to include other activities such as social and medical services and referrals, victim advocacy in courts and hospitals, victim counseling, sensitivity training for law enforcement personnel, and even organized street patrols in sexual minority neighborhoods (e.g., Herek, 1992; Wertheimer, 1992). Most community groups gave priority to documenting the frequency and characteristics of local antigay crimes using reports from hot-lines and similar sources (Jenness & Broad, 1997; see also Herek & Sims, 2008). That information constituted some of the first quantitative data about hate crimes based on sexual orientation.

Under Berrill's leadership, the NGLTF Anti-Violence Project began compiling the community-level data into annual national reports, beginning in 1984 (National Gay Task Force, 1984). The reports included tallies of the incidents documented by each local group in the previous year broken down by type of crime (e.g., murder, assault, arson) and, to the extent that

information was available, characteristics of the victims and perpetrators. The reports also included narrative accounts of violent attacks and victimization, as well as recommendations for best practices and action in areas such as legislation, policy, the criminal justice system, and education. Disseminated to activists, legislators, policy makers, law enforcement agencies, journalists, academics, and the general public, they were a valuable resource for raising awareness about the extent and nature of antigay crimes and demonstrating the need for institutional responses to them.

A recurring question during this time was whether the incidence³ of hate crimes against sexual minorities was increasing over time. Comparisons across reports suggested that such an increase was occurring but the methodology used for compiling the data limited the confidence that could be placed in any conclusions about trends. Until 1990, for example, the reports included data from any local organization (and in some cases, individuals) that submitted it to the NGLTF. Consequently, as some participating local organizations dissolved and others joined the effort, the data sources for the reports changed to some extent from one year to the next. In addition, resource differences among the participating organizations meant that they varied in their ability to consistently compile data according to NGLTF standards (e.g., Herek & Sims, 2008; National Gay and Lesbian Task Force Policy Institute, 1990).

To address this lack of continuity, the NGLTF adopted a new approach in 1990 with the aim of standardizing data-collection procedures across cities and facilitating year-to-year comparisons. Data were still accepted from anti-violence projects around the country. However, the report's focus shifted to local trends in six cities that each had a well-organized, professionally staffed local anti-violence project, and where the local law enforcement agencies tracked crimes motivated by the victim's sexual orientation (National Gay and Lesbian Task

Force Policy Institute, 1990). Thus, data collected by the same organization could be used to make comparisons across years for each city. Although this change did not eliminate all reporting problems, it made the figures more comparable from one year to the next (Herek & Sims, 2008). The annual comparisons showed increases in hate crimes in 1990, 1991, and 1992, then a decline in 1993.

Berrill left the NGLTF in the early 1990s. In 1994, the task of compiling data and issuing reports shifted to the National Coalition of Anti-Violence Programs (NCAVP), an umbrella organization of community anti-violence groups led by the New York City Anti-Violence Project. Since then, the NCAVP has continued to use the NGLTF's approach of basing analyses of trends on data from select local agencies but has expanded the number of such agencies over time. In addition, since 1995 the NCAVP has reported data for crimes based on the victim's gender identity separately from those based on sexual orientation. For the 2015 report, NCAVP tallied 1,253 incidents of hate violence against sexual and gender minorities, as well as people with HIV, using data from 13 local member organizations in 12 states (National Coalition of Anti-Violence Programs, 2016).

Survey Studies by Academics and Community-Based Advocates

The victim reports tallied by community organizations have been an important data source, yielding estimates of the number of hate crimes of various types that have occurred in a particular city in a specific year. These are probably lower-bound estimates, insofar as not all such crimes are reported to the agencies compiling the reports.

In addition to documenting the number of crimes, however, it is important to know how pervasive they are, that is, the proportion of sexual and gender minorities that have been victimized during their lifetime, a specific year, or some other specified period. Surveys

conducted with sexual and gender minority samples using interviews or self-administered questionnaires have been used to make these prevalence estimates.

In the 1970s and early 1980s, a few published academic studies reported data about victimization among sexual minorities as part of a larger description of the experiences of sexual minorities (Bell & Weinberg, 1978; Harry, 1982; Saghir & Robins, 1973). By the 1980s, antiviolence projects and other community organizations were conducting their own questionnaire studies to estimate the local prevalence of hate crime victimization (Herek & Berrill, 1992a). Academic researchers also began to conduct prevalence studies using questionnaire and survey research methods, often working in concert with community organizations (e.g., Aurand, Addressa, & Bush, 1985; D'Augelli et al., 2006; Herek, Gillis, & Cogan, 1999; Herek, Gillis, Cogan, & Glunt, 1997).

Some of these questionnaire studies assessed hate crime victimization experienced by members of a particular age group, such as older adults (D'Augelli & Grossman, 2001) or youth (Huebner, Rebchook, & Kegeles, 2004; Pilkington & D'Augelli, 1995). Others focused on victimization that occurred in a specific setting. During the 1980s, for example, several academic researchers conducted questionnaire studies to assess the prevalence of antigay victimization and discrimination on college campuses (Cavin, 1987, D'Augelli, 1987; Emory Lesbian and Gay Organization, 1987; Herek, 1986, 1993; see also Berrill, 1992).

Although the surveys used nonprobability samples whose representativeness of the larger population is unknown, they provided perhaps the best prevalence estimates available in the 1980s and 1990s, especially when considered together in combination. For example, reviewing data from 24 separate questionnaire studies conducted with samples of gay men, lesbians, and bisexuals between 1977 and 1991, Berrill (1992) reported that, across the studies, a median of

9% of respondents reported aggravated assault (i.e., assault with a weapon) because of their sexual orientation; 17% reported simple assault (i.e., without a weapon); 19% reported vandalism of personal property; 44% had been threatened with violence; 33% had been chased or followed; 25% reported having objects thrown at them; and 13% had been spat upon.

Most early survey studies of hate crime victimization did not distinguish transgender from cisgender respondents. More recently, however, some survey data focusing on the bias-motivated victimization experiences of transgender and gender-nonconforming people have begun to appear (see generally Stotzer, 2009). For example, in a questionnaire study of victimization and harassment in a sample of 402 transgender individuals, Lombardi and her colleagues (2002) found that roughly one fourth of respondents had experienced violent victimization because of their gender identity. In a nonprobability sample of 515 transgender adults in San Francisco, 36% of respondents reported they had been physically abused or beaten because of their gender identity or presentation (Clements-Nolle, Marx, & Katz, 2006). A statewide survey conducted among transgender people in Virginia found that 28% reported having been physically assaulted because of their transgender status, gender identity, or gender expression (Xavier, Honnold, & Bradford, 2007). The National Transgender Discrimination Survey (Grant, Mottet, & Tanis, 2011), an online survey conducted with more than 6,400 transgender and gender-nonconforming respondents, also provides some data about experiences with physical abuse and harassment, although it did not include an extensive set of questions about hate crime victimization.

FBI Hate Crime Statistics

National data about hate crimes were not compiled by law enforcement agencies until the HCSA was passed in 1990. In 1991, the FBI recorded 4,755 hate crime offenses in 4,558

separate incidents reported that year to local authorities, of which 422 (9%) were anti-homosexual or anti-bisexual crimes (Federal Bureau of Investigation, 1992).⁴ From 1992 through 2015 (the most recent year for which data were available when this article went to press), more than 27,000 incidents based on sexual orientation were reported to the FBI. In any given year, sexual orientation incidents accounted for between 11% and 23% of all bias crimes recorded by the FBI.⁵

In 2013, the FBI began tracking hate crimes based on the victim's gender identity. (Previously, if such crimes were reported by local law enforcement agencies they were most likely categorized as sexual orientation crimes.) That year, 31 gender identity crimes were tallied. In the 2014 and 2015 reports, the number of gender identity crimes were, respectively, 98 and 114.

Although passage of the HCSA and subsequent collection of hate crime statistics by the FBI were milestone events, the FBI data are widely believed to significantly underestimate the true incidence of sexual orientation and gender identity crimes for at least three reasons. First, participation by local law enforcement agencies is voluntary. Ever larger numbers of those agencies have participated in hate crime reporting since 1991, but most of them report no occurrence of hate crimes in their jurisdiction (Cassidy, 2016); see also Anti-Defamation League, 2015). From 2013 through 2015, for example, all participating Mississippi law enforcement agencies reported a total of only 5 hate crime incidents, one of which was based on sexual orientation. By contrast, Nevada and Utah reported, respectively, 155 and 172 incidents during that same 3-year period, of which 51 and 18 were based on sexual orientation. It seems unlikely that Mississippi had only a tiny fraction of the number of hate crimes reported by those other,

less populous states. A more plausible explanation is that hate crimes occurred but were not reported.

A second problem is that hate crimes are counted only if they are detected and labeled as such by local law enforcement authorities. Bias-motivated crimes are more likely to be reported by law enforcement agencies that train their personnel to identify hate crimes and have special staff to deal with such crimes and interact with members of minority communities. Many agencies, however, do not have such procedures in place (Haider-Markel, 2001). Without training or resources, officers dealing with a crime may not know how to ascertain whether it was motivated by the victim's sexual orientation or gender identity, or may not even consider this possibility. Consequently, many such incidents probably are reported to police but never classified as hate crimes.

A third important reason why the FBI statistics understate the number of hate crimes is that many victims never report their experience to police authorities. Nonreporting is a problem with all crime in the United States and occurs for many reasons. Victims believe the incident was not sufficiently serious to warrant reporting, for example, or that reporting is futile because the perpetrator is unlikely to be caught (Langton & Planty, 2011). Sexual and gender minority victims may be even less likely to report a hate crime than a nonbias crime because they fear further victimization by law enforcement personnel or they do not want their minority status to become a matter of public record (Berrill, 1992; Berrill & Herek, 1992; Herek, et al., 1999, Herek, Cogan, & Gillis, 2002).

Population-Based Surveys With National Probability Samples

A fourth approach to documenting hate crimes is to collect self-reports of victimization experiences from a sample recruited using probability sampling techniques. The advantage to

this approach is that findings from the sample can be generalized to the larger population within a known margin of sampling error. The disadvantage is that including enough sexual and gender minority hate crime survivors to permit meaningful statistical analysis necessitates recruitment of an extremely large sample, a difficult and expensive undertaking that requires more resources than are usually available to individual researchers.

One solution to this problem is to utilize existing government-sponsored surveys with large samples. For example, the National Crime Victimization Survey (NCVS), which is conducted annually by the U.S. Census Bureau for the U.S. Bureau of Justice Statistics (BJS), includes approximately 90,000 households and 160,000 persons interviewed each year (Wilson, 2014). Data are collected about crimes against persons age 12 and older, whether or not they were reported to law enforcement authorities. The NCVS first fielded questions about hate crime victimization in 2000, and has released reports summarizing the data collected between 2000 and 2003 (Harlow, 2005) and between 2003 and 2012 (Sandholtz, Langton, & Planty, 2013; Wilson, 2014). For 2012, the NCVS estimate of the number of nonfatal hate crime victimizations was 293,800. Of these, approximately 13% were based on the victim's sexual orientation (Wilson, 2014).

The NCAVP data reveal that a substantial proportion of hate crimes, including those based on sexual orientation, are never reported to law enforcement authorities and thus are not reflected in the FBI's hate crime statistics. In 2012, for example, only 34% of hate crime victimizations were reported to law enforcement authorities, of which 21% were based on the victim's sexual orientation (Wilson, 2014).

Part of the discrepancy between the NCVS and FBI data may be due to differences in how an incident comes to be classified as a hate crime. To be included in the FBI data, a local

law enforcement agency must have determined the incident to be a hate crime based on physical evidence and their own investigation. The NCVS, by contrast, relies on victims' perceptions of the offenders' motivations for unreported crimes. Nevertheless, respondents who report having been targeted because their race, sexual orientation, or other group membership, are asked a series of follow-up questions about the basis for their conclusion (e.g., the location of the crime, language used by the perpetrator, hate symbols at the crime scene, subsequent confirmation by the police; Sandholtz, et al., 2013).

Whereas the NCVS data are extremely valuable for estimating the annual incidence of hate crimes, regardless of whether they were reported to law enforcement authorities, they do not yield prevalence estimates for hate crimes targeting sexual and gender minorities. This is because the survey does not currently include questions about participants' sexual orientation or gender identity. However, prevalence data are available from a few other surveys administered to national probability samples.

In a 1989 national telephone survey of 400 lesbians, gay men, and bisexuals conducted by Steve Teichner for the *San Francisco Examiner*, 12% of respondents said they had been physically abused or assaulted because of their sexual orientation; 7% (10% of men, 5% of women) said they had experienced abuse or assault during the previous year (Results of poll, 1989). In a 2001 Kaiser Family Foundation (KFF) survey with a probability sample of 405 lesbian, gay, and bisexual adults in 15 U.S. cities, 32% said they had been targeted for physical violence against their person or property because of their sexual orientation (Kaiser Family Foundation, 2001). Unfortunately, the publicly available reports of these survey findings do not provide more extensive data analyses.

Using data from a 2005 national probability sample of 662 self-identified lesbian, gay, and bisexual adults, Herek (2009) reported that 13% of the respondents said they had experienced violence against their person based on their sexual orientation at least once since age 18, and 15% had experienced a property crime. Twenty-one percent had experienced one or both types of crime. Gay men were disproportionately represented among those experiencing violence (25%) and property crimes (28%); roughly 38% reported experiencing one or both types of crimes, compared to 11-13% of lesbians, bisexual men, and bisexual women. A similar pattern was observed for being threatened with violence, which was reported by 23% of the total sample, 35% of gay men, 17% of lesbians, 19% of bisexual men, and 14% of bisexual women. To the best of my knowledge, these are the most detailed hate crime victimization data from a national probability sample of sexual minorities published to date.

More recently, the Pew Research Center (2013) reported that 30% of a national sample of 1,197 lesbian, gay, bisexual, and transgender respondents said they had “been threatened or physically attacked” because of their sexual orientation or gender identity, 4% of them in the previous year. As in the Herek (2009) study, gay men were substantially more likely to be victimized (49%) than lesbians (22%) or bisexual men and women (20%).⁶ More detailed comparisons of findings from the two studies are difficult because the Pew survey combined threats and physical attacks in the same question.

Strengths and Limitations of Data Sources

From this brief review, the main strengths and limitations of different data sources should be apparent. Reports to community violence projects and organizations, which historically were the basis for the first estimates of the incidence of hate crimes against sexual and gender minorities, continue to provide valuable information about victims, perpetrators, and the

circumstances surrounding crimes in a particular city. They are likely to include crimes that were not reported to criminal justice authorities and thus are missing from FBI data. As compiled by the NCAVP, they also can be used for examining time trends in the local incidence of hate crimes.

At the same time, limits on the generalizability of the data should be kept in mind. As the NCAVP (2016) notes, their data generally do not include reports from incarcerated individuals, people who do not live in an area served by a member organization (e.g., rural populations), victims who are not out of the closet or who keep their sexual orientation or gender identity largely hidden, and people who prefer not to report their victimization to a community organization. In addition, NCAVP member organizations vary in their data collection capacities because of differences in resources, staffing, access to technology, and other factors. Although the NCAVP provides technical assistance and guidance for standardizing procedures, inconsistencies in how data are collected and categorized can occur between organizations and even among staff members within the same organization (National Coalition of Anti-Violence Programs, 2016).

Community surveys conducted with nonprobability samples have also played an important historical role in the hate crimes movement, documenting the fact that substantial proportions of sexual and gender minorities have experienced criminal victimization. By providing the first estimates of hate crime prevalence, they were essential in efforts to make the criminal justice system respond to crimes based on sexual orientation and gender identity. They also have permitted examination of the demographic, social, and psychological correlates of victimization. They continue to be an important data source, especially as efforts expand to document the unique victimization experiences of gender minorities (e.g., Stotzer, 2009).

Nevertheless, data quality in community-based surveys has varied widely. Whereas some have been methodologically rigorous, others have yielded results with limited value because of flaws in question construction, sampling, methodology, data analysis, or reporting procedures (Herek & Berrill, 1992a). Findings often cannot be compared across surveys because of differences in the categorization of crimes, the time frames in which victimization was assessed, and the way in which data are reported. In addition, because they have relied on nonprobability samples, the extent to which their prevalence estimates and other results can be generalized to the larger population cannot be determined.

The hate crimes data reported by the FBI are another important source of incidence data. They are especially valuable in that they include only incidents that have been determined by local police and sheriffs' departments to meet the criteria for a hate crime. Yet their accuracy is limited by problems of underreporting on the part of local law enforcement agencies and crime victims. Comparisons with reports from community agencies and NCVS data strongly support the conclusion that the FBI statistics provide a lower bound estimate of the number of hate crimes committed in any given year.

Data from surveys conducted with national probability samples avoid the problem of underreporting of crimes to law enforcement agencies and can provide the most solid foundation for population estimates of hate crime prevalence. To obtain reliable data for sexual and gender minority victimization, however, they must be based on very large samples which require considerable resources to recruit. The NCVS meets this requirement and has yielded valuable incidence data. The data will not permit prevalence estimates, however, until questions are included about participants' sexual orientation and gender identity (some research on the most effective way to ask such questions has already been conducted by federal agencies). Other

surveys using probability samples permit such estimates but they have been few in number and have differed in their question wording (e.g., the time frames within which they assessed victimization) and reporting procedures (e.g., whether data are reported separately for different gender and sexual orientation groups or are combined across groups), making comparisons difficult.

Some (Ill-Advised) Uses of Hate Crimes Data

I have focused on how hate crimes data are collected and how they can be used to estimate the incidence and prevalence of victimization in sexual and gender minority communities. In this final section, I briefly discuss some uses of the data that I believe are ill-advised, not only because they often disregard methodological limitations but also because they can convey implicit judgments about why hate crimes warrant attention and concern. In my experience, they arise from the recognition that sexual and gender prejudice are still widespread and that many people – policy makers and members of the general public alike – still have to be persuaded to regard hate crimes against sexual and gender minorities as a serious problem. I believe, however, that they can ultimately be counterproductive.

As noted above, when hate crimes data were first being collected and public awareness about them was spreading, the NGLTF, community anti-violence projects, and many police departments noted marked increases from year to year in the number of hate crimes being reported to them (National Gay and Lesbian Task Force Policy Institute, 1991). The FBI's hate crime statistics also showed a fairly steady increase in the number of sexual orientation crimes tallied yearly between 1992, when the first full annual report was issued (767 sexual orientation incidents were reported), and 1999 (when 1,317 such incidents were reported; Federal Bureau of Investigation, 1993, 2000).

Why the increases were being observed was a valid question for researchers and policy makers to pursue. Annual increases in incidence may have reflected an upsurge in antigay violence and victimization. However, they also may have resulted from the implementation of better documentation methods and more visible and extensive community efforts to record hate crimes, which probably increased victims' willingness to report (e.g., Herek, 1991). This question could not be settled definitively with the available data.

My own concern at the time was that public discourse surrounding the question often seemed to convey an implicit judgment that antigay hate crimes only warranted society's response *because* they were increasing in frequency and would not be such an urgent problem if they persisted at "normal" levels or if the numbers decreased, as happened in some years after the 1990s (Herek, 1991). Much of the news coverage that antigay hate crimes received during this period used the rising numbers as a "hook" for stories (Greer, 1986). Without that hook, the perceived newsworthiness of hate crimes probably would have diminished among the mass media.

Trend data are important for a variety of reasons, including that they can assist in evaluating the effectiveness of crime prevention programs and in identifying areas where additional resources should be allocated. Annual fluctuations in their incidence, however, should not be the basis for deciding whether they constitute a serious social problem.

More recently, some journalists and advocates have characterized sexual and gender minorities as the group most frequently victimized in hate crimes, relative to their representation in the general population (Park & Mykhyalyshyn, 2016; Potok, 2011). Using FBI data from 1995 through 2008, for example, Potok (2011) compared the number of hate crimes against persons (i.e., excluding property crimes such as vandalism) across six groups, including sexual

minorities. He then calculated each group's rate of victimization relative to its representation in the U.S. population.

Crimes based on sexual orientation constituted 17.4% of all hate crimes. Assuming that sexual and gender minorities comprise 2.1% of the population (based on findings from the National Health and Social Life Study, or NHSLS [Laumann, Gagnon, Michael, & Michaels, 1994]), Potok calculated that their relative rate of victimization was 8.3 times higher (i.e., 17.4 divided by 2.1) than what would be expected based on their population size. This greatly exceeded the relative rates for other groups. He concluded that "LGBT people are far more likely than any other minority group in the United States to be victimized by violent hate crime" (Potok, 2011, para. 6).⁷ This conclusion may well be accurate. However, it should be evaluated critically and its possible implications should be examined.

As noted above, the FBI data underestimate the number of all hate crimes. Comparisons such as Potok's necessarily assume that the extent of this underestimation does not differ across victim groups, an assumption whose validity has not been established. In addition, the calculations of relative rates are greatly affected by which estimate is used for the size of the sexual minority population. The NHSLS data were collected more than 25 years ago and may no longer be the best source in this regard. Population estimates derived from more recent national surveys range from 2.2% in the 2013 National Health Interview Survey to 4.0% in the 2014 Gallup Daily Tracking Survey (Gates, 2014). Depending on which estimate is used with the group totals Potok reported, sexual and gender minority adults' relative risk of hate crime victimization could range as low as 4.35 times what would be expected based on the proportion of the population they comprise. This number is still larger than what Potok obtained for the other groups, but by a considerably narrower margin – only 1.2 times greater than the relative

likelihood he calculated for Jews (3.5), the group with the second-highest relative risk for violent hate crime victimization. And the relative ranking of victim groups could change as future FBI annual reports are released.

As with considerations of trends, how prevalence rates of hate crime victimization vary across groups is a legitimate research and policy question. Once again, however, in some contexts the question can convey an implicit assumption, namely, that hate crime victimization of sexual and gender minorities is an egregious problem only so long as it is relatively more likely than victimization of racial, ethnic, and other minorities. This way of thinking threatens to set up a kind of competition among victimized groups whereby hate crimes against the group with the highest relative rate of victimization are judged to be more socially significant than crimes against other groups.

From this brief review, it should be apparent that users of hate crimes data must be cognizant of the nature of the data source and its strengths and limitations. And they should try to avoid interpretations of the data that implicitly pin the seriousness of a group's victimization to whether it is increasing and to its rank relative to other victim groups. Hate crimes against sexual and gender minorities constitute a serious, widespread problem that warrants society's attention regardless of whether the annual incidence increases or decreases in any given year and regardless of which groups have the greatest relative likelihood of being targeted.

End Notes

¹ Although many hate crimes in this era targeted gender-nonconforming people who today would self-identify as transgender or gender queer, they were typically included under the rubric of “antigay” hate crimes (as were crimes against lesbians and bisexuals).

² Concerning the history and activities of the general anti-hate crimes movement, see Jenness and Broad (1997) and Jenness and Grattet (2001). For a briefer summary, see Krouse (2010).

³ As used here, *incidence* refers to the number of hate crime occurrences within a given time period (e.g., during a particular calendar year). *Prevalence* and *prevalence rate* are used to refer to the proportion of the sexual and gender minority population (or a subgroup of it) that has experienced hate crime victimization during a given time period (e.g., over the past 12 months, since age 18, in one’s lifetime).

⁴ The 1991 statistics, however, are not considered complete and are not comparable to data compiled in subsequent years. The first full report was issued in 1993 and reported data for 1992.

⁵ These figures were compiled using the FBI’s annual hate crime reports published from 1992 through 2016.

⁶ Because of the small number of transgender participants, their responses were not reported separately but were included in the total.

⁷ Potok’s report refers to “LGBT people.” The NHSLs, however, did not report data on gender identity, and the FBI’s annual reports did not separately tally hate crimes against transgender people during the time period covered by Potok’s analysis. The FBI data that Potok used undoubtedly included some crimes against transgender people in the category of crimes based on sexual orientation but their number is unknown. Thus, his conclusions are more accurately

characterized in terms of lesbian, gay, and bisexual (LGB) people.

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